



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DEAN F. ANDAL, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JULY 28, 1999, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS

Agenda Item No: 1

**Title: Proposed Regulatory Changes to Clarify Credit Interest Policy
(Regulation 1703)**

Issue/Topic:

In order to promote consistent application of credit interest, should the Board amend Regulation 1703 to clarify the circumstances under which credit interest on overpayments is not allowed under Sales and Use Tax Law section 6908(a) related to carelessness by taxpayers?

Committee Discussion:

The Committee Chair noted that some comments had been received from interested parties on matters relating to credit interest, not directly related to the narrow focus of the issue to be discussed today, and explained that such matters would be addressed by the committee at a later date. Staff explained that a request had been received to remove Action Item 1 from the consent agenda to enable committee members to discuss and vote on the question of including an operative date in the proposed regulation revision.

The committee was addressed by Mr. Rich Taylor of Ernst & Young and Mr. Paul Nelson of Sales and Use Tax Advisors of CA, Inc. Mr. Taylor stated he had no objections to the proposed language, and voiced concern over the discrepancy in field office and headquarters policies on granting credit interest. Mr. Nelson suggested deleting the term “carelessness” from the regulation, and expressed concern over inconsistent methods used by Board staff to calculate interest on audit determinations where credit errors are noted. The Deputy Director, Sales and Use Tax Department noted that this issue is currently under discussion, and staff intends to bring the matter to the committee for decision.

A brief discussion followed regarding whether an operative date should be included in the proposed regulation revision.

Committee Action/Recommendation/Direction:

The committee directed staff to prepare a memorandum explaining how interest is calculated on audit determinations. In addition, the committee directed staff to remove the operative date of January 1, 2000 from the proposed revisions to Regulation 1703, *Interest and Penalties*, and to request authority to publish the attached revised regulation.

Agenda Item No: 2**Title: Proposed Regulatory Changes to Clarify Application of Tax to Vehicles Purchased for Use in Interstate Commerce (Regulation 1620)****Issue/Topic:**

Should subdivision (b)(3) of Sales and Use Tax Regulation 1620 be amended to expand the exemption for the use of buses in interstate or foreign commerce?

Committee Discussion:

Staff provided the background and history of the subject of this proposal, and stated staff's opinion that the regulation revisions proposed by industry require a statutory change. Staff also briefly described the application of tax to vehicles purchased for use in interstate commerce under the current language found in Regulation 1620, *Interstate and Foreign Commerce*.

The committee was addressed by Mr. Joe Vinatieri of Bewley, Lassleben & Miller, LLP, representing the California Bus Association. Mr. Vinatieri stated that the bus industry is in a state of limbo, awaiting clear guidance from the Board on this matter, and that it is within the Board's authority to promulgate the proposed regulation revision. He also stated that industry wishes to amend its proposal to replace references to "buses" with references to "vehicles" in order to include the trucking industry under the new guidelines. Mr. Dan Eisentrager of the California Bus Association then addressed the committee, expressing concern over an apparent change by Board audit staff in its interpretation of Regulation 1620 regarding "continuous" use in interstate commerce. Mr. George Edgerton of the California Trucking Association addressed the committee, urging the regulation be revised to address the issue of "continuous use", and welcomed the change in terminology from "buses" to "vehicles," stating the trucking industry shares many of the same issues with the bus industry. He also expressed concern about the inconsistent analysis of use in interstate commerce by Board audit staff.

Committee Action/Recommendation/Direction:

The committee approved industry's proposal, and directed staff to replace references to "buses" with references to "vehicles" in the text of the revision. The committee directed staff to request publication of the attached revisions to Regulation 1620, *Interstate and Foreign Commerce*, and approved staff's request to work with industry during the public comment period to further refine the language, particularly in respect to the examples included in the proposed text.

Agenda Item No: 3**Title: Proposed Regulations to Interpret the Underground Storage Tank Maintenance Fee Law****Issue/Topic:**

Should the Board adopt Underground Storage Tank Maintenance Fee ("UST fee") regulations 1201, 1203, 1206, 1208, 1212, 1213, 1220, 1248, and 1271 to explain, interpret, and clarify the application of the UST Fee law?

Committee Discussion:

Discussion of the agenda was as follows.

Action 1, Consent

Staff and industry agreed on the proposed language of the regulations. A comment suggested that the first four regulations pertaining to definitions be combined into one regulation. Staff agreed with the suggestion to combine Regulation 1201, *Petroleum*, Regulation 1203, *Gallon*, Regulation 1206, *Operator*, Regulation 1208, *Underground Storage Tanks*, into Regulation 1201, *Definitions*.

Action 2, Authorization to Publish

There was no discussion of this item.

Committee Action/Recommendation/Direction:Action 1, Consent

The committee approved all consent items including the combination of the definitions into one regulation.

Action 2, Authorization to Publish

The committee directed staff to request authority to publish the attached new Underground Storage Tank Maintenance Fee Law Regulations (Regulation 1201, *Definitions*, Regulation

1212, *Liability For Fee*, Regulation 1213, *Payment Of Fee By Operator*, Regulation 1220, *Exemption From Fee*, Regulation 1248, *Relief From Liability*, and Regulation 1271, *Records*).

Approved: /s/ Dean F. Andal
Honorable Dean F. Andal, Committee Chair

/s/ E. L. Sorensen, Jr.
E. L. Sorensen, Jr., Executive Director

BOARD APPROVED

at the 7/29/99 Board Meeting

/s/ Janice Masterton
Janice Masterton, Chief
Board Proceedings Division

Regulation 1703. Interest And Penalties.

References: Revenue and Taxation Code Sections listed below in paragraph (a).

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i>Subject</i>	<i>Sections</i>	
	<i>Interest</i>	<i>Penalties</i>
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6479.3, 6591
Deficiency determinations	6482	6484 (negligence) 6485 (fraud) 7051.2
Determination - failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of		6565, 7051.2
Offsets	6512	6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294

<i>Subject</i>	<i>Interest</i>	<i>Sections</i> <i>Penalties</i>
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6072, 6094.5
Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	

(b) Interest.

(1) Interest Rates.

(A) In General. Interest is computed at the modified adjusted rate per month, or fraction thereof. “Modified adjusted rate per month, or fraction thereof” means the modified adjusted rate per annum divided by 12.

(B) Underpayments. “Modified adjusted rate per annum” for underpayments of tax is the rate for underpayments determined in accordance with the provisions of Section 6621 of the Internal Revenue Code plus three percentage points. Such rate is subject to semiannual modification pursuant to the provisions of subparagraph (c) of Section 6591.5 of the Revenue and Taxation Code.

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of Section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if .50%).

(D) Managed Audit Program. Upon completion of the managed audit and verification by the board, interest shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period.

(E) Error or Delay by Employee of Board or Department of Motor Vehicles. For tax liabilities that arise during taxable periods commencing on or after July 1, 1999, the Board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 6480.4, 6480.8, 6513, 6591, and 6592.5 of the Revenue and Taxation Code under either of the following circumstances:

1. Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.

2. Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

For the purposes of this subdivision, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

Any person seeking relief under this subdivision shall file with the Board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the Board may require.

(F) Erroneous Refund. Operative for any action for recovery under Revenue and Taxation Code section 6961 on or after July 1, 1999, no interest shall be imposed on the amount of an erroneous refund by the Board until 30 days after the date on which the Board mails a notice of determination for repayment of the erroneous refund if the Board finds that neither the person liable for payment of tax nor any party related to that person had in any way caused an erroneous refund for which an action for recovery is provided under Section 6961 of the Revenue and Taxation Code. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(2) Late Payments Generally. Interest applies to the amount of all taxes, except prepayments of amounts of tax due and payable pursuant to Section 6471 of the Revenue and Taxation Code, not paid within the time required by law from the date on which the amount of tax became due and payable until the date of payment.

Interest applies to amounts due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment of tax required pursuant to Sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

Operative January 1, 1992, interest applies to amounts due but not paid by any producer, importer, or jobber of fuel as defined in Section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment of tax required pursuant to Sections 6480.16 and 6480.18 of the Revenue and Taxation Code.

(3) Determinations. Except as otherwise provided in subdivisions (b)(1)(E) and (b)(1)(F) above, interest applies to all determinations from the date on which the amount of tax becomes due and payable until the date of payment.

(4) Extensions of Time. In cases in which an extension of time for the filing of a return and the payment of tax has been granted, interest applies from the date on which the tax would have been due and payable had the extension not been granted until the date of payment. In cases in which an extension of time has been granted for making a prepayment of tax pursuant to Section 6471 of the Revenue and Taxation Code, interest applies to the unpaid amount of the required prepayment at the same rate.

(5) Refunds and Credits.

(A) In General. If an overpayment is credited on amounts due from any person or is refunded, interest will be computed on the overpayment from the first day of the calendar month following the month during which the overpayment was made. A refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited. Interest will be paid in the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the refund is approved by the board, whichever date is the earlier; and in the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(B) Intentional or Careless Overpayments. ~~If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.~~ Credit interest will be allowed on all overpayments, except when statutorily prohibited or in cases of intentional overpayment, fraud, negligence, or carelessness. Carelessness occurs if a taxpayer makes an overpayment which: 1) is the result of a computational error on the return or on its supporting schedules or the result of a clerical error such as including receipts for periods other than that for which the return is intended, failing to take allowable deductions, or using an incorrect tax rate; and 2) is made after the taxpayer has been notified in writing by the Board of the same or similar errors on one or more previous returns.

(C) Waiver of Interest as Condition of Deferring Action on Claim. If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action.

(6) Improper Use of Resale Certificate. Interest applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller. The interest is computed from the last day of the month following the quarterly period for which a return should have been filed and the amount of tax or any portion thereof should have been paid.

(7) Untimeliness Caused by Disaster. A person may be relieved of the interest imposed by Sections 6459, 6480.4, 6480.8, 6513, and 6591 of the Revenue and Taxation Code if the board finds that the person's failure to make a timely return or payment was occasioned by a disaster and was neither negligent nor willful. Such person shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

For purposes of this section "disaster" means fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in Section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. If the failure to make a prepayment as described in (c)(1)(A)1 above is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, the penalty shall be 10 percent instead of 6 percent.

3. Any person required to make a prepayment who fails to make a timely prepayment, but who makes such prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, shall pay a penalty of 6 percent of the amount of the prepayment.

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. A penalty of 25% shall apply to the amount of prepayment due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment as required pursuant to Sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

6. Operative January 1, 1992, a penalty of 10 percent shall apply to the amount of prepayment due but not paid by any producer, importer, or jobber of fuel as defined in Section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment as required pursuant to Sections 6480.16 and 6480.18 of the Revenue and Taxation Code. This penalty shall be 25 percent if the producer, importer, or jobber knowingly or intentionally fails to make a timely remittance.

(B) Other Late Payments. A penalty of 10 percent of the amount of all unpaid tax shall be added to any tax not paid in whole or in part within the time required by law.

(C) Vehicles, Vessels and Aircraft. A purchaser of a vehicle, vessel or aircraft who registers it outside this state for the purpose of evading the payment of sales or use taxes shall be liable for a penalty of 50 percent of any tax determined to be due on the sales price of the vehicle, vessel or aircraft.

(2) Late Return Forms Generally

(A) Any person who fails to file a return in accordance with the due date set forth in Section 6451 of the Revenue and Taxation Code or the due date established by the board in accordance with Section 6455 of the Revenue and Taxation Code, shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(B) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(3) Determinations.

(A) Negligence or Intentional Disregard. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to deficiency determinations if any part of the deficiency for which the determination is imposed is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations.

(B) Failure to Make Return. A penalty of 10 percent of the amount of tax specified in the determination shall be added to all determinations made on account of the failure of any person to make a return as required by law.

(C) Fraud or Intent to Evade. A penalty of 25 percent of the amount of the tax specified in a deficiency determination shall be added thereto if any part of the deficiency for which the

determination is made is due to fraud or intent to evade the Sales and Use Tax Law or authorized regulations. In the case of a determination for failure to file a return, if such failure is due to fraud or an intent to evade the Sales and Use Tax Law or authorized regulations, a penalty of 25 percent of the amount required to be paid, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty for failure to file a return.

A penalty of 50 percent applies to the taxes imposed upon any person who, for the purpose of evading the payment of taxes, knowingly fails to obtain a valid permit prior to the date in which the first tax return is due. The 50 percent penalty applies to the taxes determined to be due for the period during which the person engaged in business in this state as a seller without a valid permit and may be added in addition to the 10 percent penalty for failure to file a return. However, the 50 percent penalty shall not apply if the measure of tax liability over the period during which the person was engaged in business without a valid permit averaged \$1000 or less per month. Also, the 50 percent penalty shall not apply to the amount of taxes due on the sale or use of a vehicle, vessel, or aircraft, if the amount is subject to the penalty imposed by Section 6485.1 or 6514.1 of the Revenue and Taxation Code.

(D) Nonpayment of Determinations. A penalty of 10 percent of the amount of the tax specified in the determination shall be added to any determination not paid within the time required by law.

(4) Improper Use of Resale Certificate. A penalty of 10 percent applies to the taxes imposed upon any person who knowingly issues a resale certificate for personal gain or to evade the payment of taxes while not actively engaged in business as a seller.

The penalty is 10 percent of the amount of tax or \$500, whichever is greater, if the purchase is made for personal gain or to evade payment of taxes.

(5) Direct Payment Permits. Every holder of a direct payment permit who gives an exemption certificate to a retailer for the purpose of paying that retailer's tax liability directly to the board must make a proper allocation of that retailer's local sales and use tax liability and also its district transactions and use tax liability if applicable. Such allocation must be made to the cities, counties, city and county, redevelopment agencies, and district to which the taxes would have been allocated if they had been reported by that retailer. Allocations must be submitted to the board in conjunction with the direct payment permitholder's tax return on which the taxes are reported. If the local and district taxes are misallocated due to negligence or intentional disregard of the law, a penalty of 10 percent of the amount misallocated shall be imposed.

(6) Failure to Obtain Evidence that Operator of Catering Truck Holds Valid Seller's Permit. Any person making sales to an operator of a catering truck who has been required by the Board pursuant to Section 6074 of the Revenue and Taxation Code to obtain evidence that the operator is the holder of a valid seller's permit issued pursuant to Section 6067 of the Revenue and Taxation Code and who fails to comply with that requirement shall be liable for a penalty of five hundred dollars for each such failure to comply.

(7) Failure of Retail Florist to Obtain Permit. Any retail florist (including a mobile retail florist) who fails to obtain a seller's permit before engaging in or conducting business as a seller shall, in addition to any other applicable penalty, pay a penalty of five hundred dollars (\$500). For purposes of this regulation, "mobile retail florist" means any retail florist who does not sell from a structure or retail

shop, including, but not limited to, a florist who sells from a vehicle, pushcart, wagon, or other portable method, or who sells at a swap meet, flea market, or similar transient location. "Retail florist" does not include any flower or ornamental plant grower who sells his or her own products.

(8) Relief from Penalty for Reasonable Cause. If the board finds that a person's failure to make a timely return, payment, or prepayment, or failure to comply with the provisions of Section 6074 of the Revenue and Taxation Code is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 6074, 6476, 6477, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2 of the Revenue and Taxation Code for such failure.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. Section 6592 of the Revenue and Taxation Code, providing for the relief of certain penalties does not apply to the 10 percent penalty imposed for failure to make a timely prepayment under Section 6478 of the Revenue and Taxation Code.

History: Amended September 18, 1963.

Amended August 2, 1965, applicable on and after August 1, 1965.

Amended June 23, 1966, applicable as amended on and after July 1, 1966.

Amended November 7, 1967, applicable on and after November 8, 1967.

Amended October 8, 1968.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended December 17, 1975, effective January 1, 1976. Changed 1/2% interest to 1% per month.

Amended June 25, 1981, effective November 1, 1981. Added references. In (a) added Section 6072, improper use of resale certificates and Section 6593, leases to the U.S. Government. Added (b)(5) improper use of resale certificate. Added (b)(6) untimeliness caused by natural disaster. Added (b)(7) leases to the U.S. Government. In (c)(2) added (E) improper use of resale certificate. In (c) added (4) leases to the U.S. Government.

Amended February 3, 1983, effective July 3, 1983. In subdivision (a), deleted reference to Section 6053 and added the last line. In subdivision (b)(1), deleted reference to the rate of interest and added second paragraph. In subdivision (b)(2), (3) and (4), deleted reference to rate of interest. In subdivision (b)(5), deleted reference to rate of interest and added last sentence. In subdivision (b)(6), deleted reference to "NATURAL" and added reference to relief from interest and definition of "disaster".

Amended October 9, 1985, effective February 9, 1986. In Subdivision (a), added reference to Revenue and Taxation Code Sections 6291-6294, and 6591.5 under "Interest" with short explanation under "subject;" and Sections 6291-6292, 6985.1, and 6514.1 (intent to evade) under "Penalties" with short explanation under "subject." In Subdivision (b)(4), obsolete language is stricken and subheadings are added. In Subdivision (b)(5), deleted language concerning when interest is computed in last sentence and added language beginning "last day of the month . . . ". In Subdivision (b)(7), deleted reference to interest with respect to leases to the United States Government. In Subdivision (c), deleted obsolete provisions and updated text to show when penalties apply to prepayments and purchases of vehicles, vessels, or aircraft when registered outside the state for purpose of evading the payment of sales or use tax.

Amended August 20, 1987, effective November 15, 1987. In subdivision (a), added references to Sections 6073, 6074 and 7051.2. In subdivision (c)(2)(C), added second paragraph pertaining to 50% penalty for fraud. Added subdivision (c)(4) pertaining to the penalties associated with a direct payment permit holder's improper allocation of a retailer's local tax liability due to the direct payment permit holder's negligence or intentional disregard of the law. Added subdivision (c)(5) pertaining to the penalty associated with the failure to obtain evidence that an operator of a catering truck holds a valid seller's permit. In subdivision (c)(6), added Sections 6074 and 7051.2 to the list of penalty provisions for which the Board may grant relief for reasonable cause.

Amended July 27, 1988, effective November 11, 1988. In subdivision (a), added provisions that pertain to the interest and penalty provisions found in Revenue and Taxation Code Section 7153.5 (Chapter 1064, Statutes of 1987).

Amended August 26, 1992, effective January 20, 1993. Paragraph (a) updated the list of Sales and Use Tax Law sections prescribing interest and penalties. Paragraph (b)(1) added explanation of procedures for computing interest on overpayments and under payments. Paragraphs (b)(2) and (c)(1)(A)6 added explanation of application of interest and penalties to amounts due but not paid on sale of fuel as provided in Sections 6480.16, Revenue and Taxation Code.

Amended May 19, 1997, effective June 18, 1997. Added new subdivision (c)(6) to incorporate provisions of Chapter 1130, Statutes of 1996, and renumbered the following subdivision.

Amended September 2, 1998, effective October 2, 1998. In subdivision (a), added references to Sections 6479.3, 6591, and 7076.5. Added new subdivision (b)(1)(D) to incorporate provisions of Chapter 686, Statutes of 1997. Added subdivision (c)(2) to incorporate provisions of Chapter 1294, Statutes of 1992 and Chapter 1087, Statutes of 1996, and renumbered following subdivisions.

Amended March 18, 1999, effective April 17, 1999. Reference to Section 6479.3 added to subdivision (a) to correct clerical omission in previous amendment. Added cross references in subdivision (a) to Sections 6593.5 & 6964 and added subdivision (b)(1)(E) & (F) to incorporate provisions of Assembly Bill 821, Statutes 1998, Chapter 612. Clerical amendments made to un-numbered paragraph in subdivision (c)(1)(A)4. Phrase "of the Revenue and Taxation Code" added to section numbers throughout; references to "Sales and Use Tax Law" deleted from subdivisions (c)(6) and (c)(8).

Regulation 1620. Interstate and Foreign Commerce.

Reference: Sections 6006, 6008, 6009.1, 6247, 6352, 6366.2, 6368.5, 6387 and 6396, Revenue and Taxation Code.

(a) Sales Tax.

(1) In General. When a sale occurs in this state, the sales tax, if otherwise applicable, is not rendered inapplicable solely because the sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the taxing of the sale, or the gross receipts derived therefrom, is prohibited by the United States Constitution or there exists a statutory exemption. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction. The retailer has the burden of proving facts establishing his right to exemption.

(2) Sales Following Movement of Property Into State From Point Outside State.

(A) From Other States - When Sales Tax Applies. Sales tax applies when the order for the property is sent by the purchaser to, or delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this state, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business and the sale occurs in this state. The term "other place of business" as used herein includes the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the retailer's functions in this state. It is immaterial that the contract of sale requires or contemplates that the goods will be shipped to the purchaser from a point outside the state. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the tax.

(B) From Other States - When Sales Tax Does Not Apply. Sales tax does not apply when the order is sent by the purchaser directly to the retailer at a point outside this state, or to an agent of the retailer in this state, and the property is shipped to the purchaser, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state, or to the retailer's agent in this state for delivery to the purchaser in this state, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent of the retailer having any connection with such branch, office, outlet, or place of business.

(C) Imports. Sales tax applies to sales of property imported into this state from another country when the sale occurs after the process of importation has ceased, regardless of whether the property is in its original package, if the transaction is otherwise subject to sales tax under subdivision (a)(2)(A) of this regulation.

(3) Sales Preceding Movement of Goods From Within State to Points Outside State.

(A) To Other States - When Sales Tax Applies. Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer (see (3)(D) below) to show delivery of the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

(B) Shipments Outside the State - When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer or

2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a "carrier" or "forwarding agent" within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (This subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

(C) Exports.

1. When Sales Tax applies. Except for certain new motor vehicles delivered to a foreign country pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610), sales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.

Sales of property such as fuel oil and other items consumed during a voyage to a foreign country are not exempt even though they are transported out of, and are not returned to this country. It is immaterial that the ship to which the property is delivered is of foreign registry.

2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to a foreign country. To

be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property . Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

There has been an irrevocable commitment of the property to the exportation process when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer in a continuous route or journey to the foreign country by means of:

- (a) Facilities operated by the retailer,
- (b) A carrier, forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export, or
- (c) A ship, airplane , or other conveyance furnished by the purchaser for the purpose of carrying the property in a continuous journey to the foreign country, title to and control of the property passing to the purchaser upon delivery. Delivery by the retailer of property into a facility furnished by the purchaser constitutes an irrevocable commitment of the property into the exportation process only in those instances where the means of transportation and character of the property shipped provide certainty that the property is headed for its foreign destination and will not be diverted for domestic use. The following are examples of deliveries by the retailer into facilities furnished by the purchaser which demonstrate an irrevocable commitment of the property into the exportation process:

1. Sale of fuel oil delivered into the hold of a vessel provided by the purchaser. The fuel is to be unloaded at the foreign destination.
2. Sale of jewelry delivered aboard a scheduled airline with a scheduled departure to a foreign destination.
3. Sale of equipment, designed specifically for use in the foreign destination, delivered to a foreign purchaser's aircraft. The foreign purchaser has filed a flight plan showing that the aircraft will be transporting the property on a continuous journey to its foreign destination.

The following are examples of sales which do not demonstrate sufficient indicia of an irrevocable commitment to the exportation process and do not qualify as exports:

1. Sale of jewelry delivered to a foreign purchaser at the retailer's place of business or to the purchaser or his representative at the airport prior to boarding the plane. The tax applies even though the purchaser may hold tickets for the foreign destination.
2. Sale of a television set delivered into the trunk of a passenger vehicle or into the storage area of a pickup truck.

3. Sale of equipment delivered to a foreign purchaser's aircraft even though a flight plan had been filed showing that the aircraft was to be flown to a foreign destination. If the equipment sold had been altered or specifically designed for use in the foreign destination, then the combined factors of the character of the property and the means of transportation would provide certainty of export and the sale would qualify as an export as described in (3) above.

Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country. Nevertheless, sales of property are exempt if transported under the circumstances described in 2.(b) above to a warehouse or other collecting point of a carrier, forwarding agent, export packer, customs broker, or other person engaged in the business of preparing property for export, or arranging for its export. Property is regarded as transported under the circumstances described in 2.(b) above, when the property is sold to a purchaser for shipment abroad and is shipped or delivered to a point in this state to a person who is not the purchaser, whether or not that person is a legal entity related to the purchaser, who ships or delivers the property to a foreign destination as provided in paragraph (a)(3)(C)2.(b) of this regulation.

(D) Proof of Exemption. Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken under (B) above. Bills of lading, import documents of a foreign country or other documentary evidence of export must be obtained and retained by retailers to support deductions taken under (C) above.

(E) Particular Applications.

1. Property Mailed to Persons in the Armed Forces. Tax does not apply to sales of property which is mailed by the retailer, pursuant to the contract of sale, to persons in the armed forces at points outside the United States, notwithstanding the property is addressed in care of the postmaster at a point in this state and forwarded by him to the addressee.

When mail is addressed to Army Post Offices (A.P.O.'s) or to Fleet Post Offices (F.P.O's) in care of the postmaster, it will be presumed that it is forwarded outside California. The retailer must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

2. Property for Defense Purposes Delivered to Offices of the United States. Tax does not apply to sales of property shipped to a point outside this state pursuant to the contract of sale when the property is marked for export and delivered by retailer to the "contracting officer," "officer in charge," port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

3. Airplanes Delivered to Agencies of the United States. Tax does not apply to sales of airplanes and parts and equipment for airplanes transported to a point outside this state pursuant to the contract of sale when such property is delivered to the United States Air Force or any other

agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

4. Repairers. When repairers of property in California, in fulfillment of their repair contracts with their customers, ship the repaired property to points outside this state by one of the methods set forth under (a)(3)(B) and (C) above, tax does not apply to the sale by the repairer of the repair parts and materials affixed to and becoming a component part of the repaired property so shipped.

(b) Use Tax.

(1) In General. Use tax applies with respect to any property purchased for storage, use or other consumption and stored, used, or consumed in this state, the sale of which is exempt from sales tax under this regulation.

(2) Exceptions.

(A) Use tax does not apply to property held or stored in this state for sale in the regular course of business nor to property held for the purposes designated in subparagraph (b)(5), below.

(B) Use tax does not apply to property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

(C) Use tax, however, does not apply to certain new motor vehicles purchased for subsequent delivery to a foreign country and so delivered pursuant to paragraph (b)(2)(D) of Regulation 1610 (18 CCR 1610).

(3) Purchase for Use in this State. Property delivered outside of California to a purchaser known by the retailer to be a resident of California is regarded as having been purchased for use in this state unless a statement in writing, signed by the purchaser or the purchaser's authorized representative, that the property was purchased for use at a designated point or points outside this state is retained by the vendor.

Notwithstanding the filing of such a statement, property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California. All vehicles purchased outside of California which are brought into California are regarded as having been purchased for use in this state if the

first functional use of the vehicle is in California. When the vehicle is first functionally used outside of California, the vehicle will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless one-half or more of the miles traveled by the vehicle during the six month period immediately following its entry into this state are miles traveled in interstate commerce. Such use will be accepted as proof of an intent that the property was not purchased for use in California. Examples of what constitutes interstate commerce include, but are not limited to the following:

1. A sightseeing tour bus group (charter) or regularly scheduled bus service (per capita) originates in California and travels to another state or country for a single day or several days then returns to California where the charter or schedule terminates.

2. A charter bus deadheads under contract to another state, picks up the group and operates the charter without entering the state of California, drops the group in the other state, and deadheads back into the state of California. (Charter was quoted round trip.)

3. A charter bus group tours under contract to another state or country for a day or several days then drops the passengers in the other state or country and then dead heads back under contract to its terminal or next assignment.

4. A sightseeing tour bus group (charter) arrives in California via plane, train, or ship is picked up by bus and tours California for a number of days and then goes to another state or country for a number of days and then terminates service either in another state, country or California.

5. A sightseeing tour bus group (charter) or regularly scheduled bus service enters California in bus #1, and bus #1 has a road failure which causes bus #2 to continue the trip while bus #1 is being mechanically repaired. Bus #2 would be in interstate commerce as a continuation intent of the character of the original trip.

6. Regularly scheduled services where a carrier operating wholly within California is picking up or feeding passengers arriving from or destined to a state or country other than California to another form of transportation be it plane, train, ship, or bus. (Example: an airport bus service or a bridge carrier for Amtrak.)

For purposes of this subparagraph “functional use” means use for the purposes for which the property was designed.

(4) Imports. Use tax applies with respect to purchases of property imported into this state from another country when the use occurs after the process of importation has ceased and when sales tax is not applicable, regardless of whether the property is in its original package.

(5) “Storage” and “Use” - Exclusions. “Storage” and ‘use” do not include the keeping, retaining or exercising any right or power over property for the purposes of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of

being processed, fabricated or manufactured, into, attached to, or incorporated into, other property to be transported outside the state and thereafter used solely outside the state.

The following examples are illustrative of the meaning of the exclusion:

1. An engine installed in an aircraft which is flown directly out of the state for use thereafter solely outside the state qualifies for the exclusion. The use of the engine in the transporting process does not constitute a use for purposes of the exclusion. However, if any other use is made of the aircraft during removal from this state, such as carrying passengers or property, the exclusion does not apply.

2. An engine installed in a truck which is transported by rail or air directly out of the state for use thereafter solely outside the state qualifies for the exclusion.

3. An engine transported outside the state and installed on an aircraft which returns to the state does not qualify for the exclusion. It does not matter whether the use of the aircraft in California is exclusively interstate or intrastate commerce or both.

4. An engine transported outside the state and installed on an aircraft which does not return to the state, qualifies for the exclusion.

(c) Rail Freight Cars. Sales tax does not apply to the sale of, and the use tax does not apply to the storage, use or other consumption in this state of rail freight cars for use in interstate or foreign commerce.

History: Effective September 9, 1953.
 Amended September 14, 1955.
 Amended September 18, 1963.
 Amended and renumbered December 9, 1970, effective January 15, 1971.
 Amended July 27, 1976, effective August 28, 1976. Noted "original package" doctrine was overruled and that goods held for export are not yet in export streams.
 Amended December 7, 1977, effective January 19, 1978. In (a)(3)(D) changed "export declarations" to "bills of lading" and "import documents."
 Amended November 6, 1985, effective February 8, 1986. In subdivision (a)(3)(C), "Exports," added language to more clearly define what constitutes an export for sales and use tax purposes, and gives specific examples of what constitutes an exempt sale in foreign commerce and examples of what does not qualify. In subdivision (a)(3)(C)(2), amended language expands the definition of the requirements for a sale to qualify as a sale in foreign commerce when the property is delivered to the purchaser's conveyance in this state. Amended language includes examples of exempt and taxable sales. In subdivision (b)(5), "Storage and "Use" - Exclusions," language amended to reflect court decision in *Stockton Kenworth, Inc. v. State Board of Equalization* 151 Cal.App.3d 344. Amendment explains certain uses that may be made of property which is to be subsequently transported outside this state that do not constitute a taxable use of the property in this state.

Amended September 28, 1978, effective November 18, 1978. Amends (b)(1); adds (b)(2) and (3); renumbers (b)(2) to (b)(4), and (b)(3) to (b)(5).

Amended February 7, 1990, effective April 18, 1990. Paragraph (a)(3)(C) which explains that sales tax applies to property delivered to the purchaser in California prior to export was amended and paragraph (b)(2)(C) was added to explain that deliveries of certain motor vehicles to foreign tourists are exempt. Amended (a)(3)(C)2.(c) and (b)(2)(A) to correct erroneous references in the California Administrative Code.

Amended May 3, 1994, effective July 14, 1994. Amended paragraph (a)(2)(A) to define when sales tax will apply to sales which follow the movement of tangible personal property into California by adding “independent contractor” to the term “other place of business” and “installation” and “assembly” to the functions performed.

Amended June 28, 1995, effective November 4, 1995. Amended paragraph (a)(2)(A) to delete the term “independent contractor” from the term “other place of business” and deleting “installation” and “assembly” from the functions performed as amended in error.

Amended November 18, 1998, effective February 7, 1999. Subdivision (a)(2)(C) amended by adding phrase “, if ... regulation.” Sentence “Property ... regulation” added to last unnumbered paragraph of subdivision (a)(3)(C).

Regulation 1201. DEFINITIONS.

(a) “Gallon” means the United States gallon of 231 cubic inches, without adjustment of the volumetric gallonage for temperature correction of the petroleum delivered into the underground storage tank, except that temperature corrected gallonage to 60 degrees Fahrenheit will be accepted as the gallonage delivered when all of the following conditions are met:

(1) The quantity of petroleum delivered in a single delivery to a single location is 1,000 or more gallons; and

(2) The delivery of the petroleum is invoiced to the purchaser, and settlement is made by the purchaser, based on the temperature corrected gallonage of the petroleum delivered; or, if the delivery is to a tank location operated by the manufacturer of the petroleum, the gallonage accounted for in the inventory records of the manufacturer for the delivery location is maintained on a temperature corrected basis; and

(3) Temperature correction is consistently applied to all deliveries to the location over a period of 12 or more consecutive months.

(b) “Operator” means any person who is in control of, or has responsibility for, the daily operation of an underground storage tank. The operator is not liable for the fee unless the operator is also the owner of the underground storage tank.

(c) “Petroleum” means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. Petroleum includes products that are blends of hydrocarbons derived from crude oil through processes such as separation, conversion, upgrading, or finishing.

(d) “Underground Storage Tank” means a tank or combination of tanks, including any attached piping, that is used for the accumulation of petroleum, and the volume of which is 10 percent or more beneath the surface of the ground.

(1) The term “underground storage tank” does not include any of the following:

(A) A tank of 1,100 gallons or less capacity which is located on a farm or on property used primarily for dwelling purposes and which is used for storing motor vehicle fuel for purposes other than for resale.

(B) A tank used for storing heating oil for consumptive use on the premises where stored.

(C) A tank which meets all the following conditions:

(i) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.

(ii) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283 of the Health and Safety Code.

(iii) The owner or operator of the underground storage tank conducts daily inspections of the tank and maintains a log of inspection results for review by the local agency designated pursuant to Section 25283 of the Health and Safety Code, as requested by the local agency.

(iv) The local agency designated pursuant to Section 25283 of the Health and Safety Code determines without objection from the State Water Resources Control Board that the underground storage tank meets requirements which are equal to or more stringent than those imposed by Division 20, Chapter 6.7 of the Health and Safety Code, commencing with Section 25280.

Authority: Section 50152 Revenue and Taxation Code.
Section 25299.42 Health and Safety Code.

Reference: Section 50107, 50108.1, 50109, and 7355 Revenue and Taxation Code.
Sections 25281, 25283.5, 25299.20, 25299.22, 25299.24, 25299.41 and
25299.43 Health and Safety Code.
Title 18, California Code of Regulations, Section 1121.
40 Code of Federal Regulations Section 280.12.

Regulation 1212. LIABILITY FOR FEE.

(a) The fee is imposed upon the owner of an underground storage tank for each gallon of petroleum placed into the tank. The owner of the tank is liable for payment of the fee regardless of whether the owner is the operator of the underground storage tank and is liable for the fee even if the owner and operator have entered into an agreement that requires the operator to pay the fee to the board.

(b) The fee is due regardless of whether the fee has previously been paid for gallons of petroleum that were removed from an underground storage tank and placed into another underground storage tank or redeposited into the same tank in which they were previously stored.

(c) An owner is liable for the fee on all gallons placed in the underground storage tank(s) he or she owns. Where the owner requires a certain brand of fuel to be placed in a tank and the operator also places a different brand of fuel in the tank, the owner is liable for the fee on the gallons of both brands of fuel, even if placing fuel of a different brand in the tank violates the lease between the operator and owner.

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the fee payer otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107, 50109, and 50159 Revenue and Taxation Code.
 Sections 25299.41 and 25299.43 Health and Safety Code.

Regulation 1213. PAYMENT OF FEE BY OPERATOR.

(a) If the board discovers that the fee has been paid by the operator, but the notarized documents described in subdivisions (b)(1) and (b)(2) below have not been filed with the board, the owner and operator will be given an opportunity to request in writing that fee payments made by the operator be transferred to the owner's account. Until such request is made, the owner remains liable for payment of the fee, penalties, and interest without credit for fees paid by the operator, and the operator may request a refund of the amounts paid pursuant to Section 50140 of the Revenue and Taxation Code.

(b) For the convenience of the owner and operator, and to facilitate payment of the fee by the operator on behalf of the owner, the board shall mail fee returns and any notices for the owner's account to the operator if both of the following conditions are met:

(1) The owner executes a notarized document in the form shown below, requesting that the fee returns and all notices for the owner's account be mailed to the operator. The owner must acknowledge in the form that he or she is responsible for the fee if, for example, the operator fails to make payment, pays the fee late, or underreports the gallons on which the fee is based. The documents will remain in effect until the owner advises the board and the operator in writing of any change.

(2) The operator executes a notarized document in the form shown below, acknowledging that he or she will pay the fee and any related interest and penalty on behalf of the owner and will not file a claim for refund of the fee based on the grounds that he or she was the operator rather than the owner of the tank and, therefore, did not owe the fee. The document will remain in effect until the operator advises the board and owner in writing of any change.

Exhibits A and B are samples of the documents described in (b)(1) and (b)(2) above.

Authority: Section 50152 Revenue and Taxation Code.
Section 25299.42 Health and Safety Code.

References: Sections 50107, 50109, 50139, and 50140 Revenue and Taxation Code.
Sections 25299.41 and 25299.43 Health and Safety Code.

Exhibit A**STATEMENT OF UNDERGROUND STORAGE TANK OWNER**(Title 18, California Code of Regulations, Section 1213)Account No.: TK MT 44-

I hereby authorize the Board of Equalization to send all notices and returns concerning the identified Underground Storage Tank Maintenance Fee (Part 26, Division 2 of the Revenue and Taxation Code, commencing with Section 50101) Account to the following:

Location of tanks(s) STREETCITYCOUNTYName of Tank OperatorArea Code and Phone NumberMailing Address of Tank Operator

By executing this document, I/we understand that all returns and notices regarding the above Underground Storage Tank Maintenance Fee Account will be mailed to the tank operator identified above, but that I/we am/are responsible for payment of all Underground Storage Tank Maintenance Fees, penalties and interest due based on the gallons of petroleum placed in the underground storage tank(s). I/we also acknowledge receipt of a copy of the Board's Pamphlet 88, Underground Storage Tank Fee.

Name of Tank Owner (Please Print)Area Code and Telephone NumberMailing Address of Tank OwnerSignature of Tank OwnerDateTitle (owner, partner, corporate officer)Signature of Tank OwnerDateTitle (owner, partner, corporate officer)Attach Notary Statement Here

Exhibit B**STATEMENT OF UNDERGROUND STORAGE TANK OPERATOR**(Title 18, California Code of Regulations, Section 1213)Account No.: TK MT 44-Location of tanks(s) STREET CITY COUNTYName of Tank Owner Area Code and Telephone NumberMailing Address of Tank Owner

By executing this document, I/we understand that all returns and notices regarding the above Underground Storage Tank Maintenance Fee Account will be mailed to me/us, as the tank operator identified below. As the operator of the underground storage tank, I/we acknowledge I/we am/are paying the Underground Storage Tank Maintenance Fee on behalf of the tank owner and will not apply for a refund of the fees on the basis that I/we am/are not the owner of the tank and, therefore, do not owe the fees. I/we will notify both the Board of Equalization and the tank owner of any changes affecting this account. I also acknowledge receipt of a copy of the Board's Pamphlet 88, Underground Storage Tank Fee.

Name of Tank Operator (Please Print) Area Code and Telephone NumberMailing Address of Tank OperatorSignature of Tank Operator DateTitle (owner, partner, corporate officer)Signature of Tank Operator DateTitle (owner, partner, corporate officer)Attach Notary Statement Here

Regulation 1220. EXEMPTION FROM FEE.

The fee does not apply to:

- (a) The State of California, or any agency or department thereof.
- (b) The United States, its unincorporated agencies and instrumentalities.
- (c) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
- (d) Banks and other financial institutions.
- (e) Insurance companies.
- (f) Any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior when the underground storage tank is located upon an Indian reservation, including rancherias, or any land held by the United States in trust for any Indian tribe or individual Indian.

Authority: Section 50152 Revenue and Taxation Code.
 Section 25299.42 Health and Safety Code.

References: Sections 50107 and 50108 Revenue and Taxation Code.
 Sections 25299.20 and 25299.21 Health and Safety Code.

Regulation 1248. RELIEF FROM LIABILITY.

(a) IN GENERAL. A person may be relieved from the liability for the payment of the fee, including any penalties and interest added to those fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) **WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

Authority: Section 50152 Revenue and Taxation Code.

Section 25299.42 Health and Safety Code.

Reference: Section 50112.5 Revenue and Taxation Code.

Regulation 1271. RECORDS.**(a) Definitions.**

(1) “Database Management System” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) “Electronic data interchange” or “EDI technology” means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) “Hardcopy” means any document, record, report or other data maintained in a paper format.

(4) “Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) “Fee payer” means any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code.

(b) General.

(1) A fee payer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct underground storage tank maintenance fee liability and all records necessary for the proper completion of underground storage tank maintenance fee returns. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of fee returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 50153.

(c) Machine-Sensible Records

(1) General.

(A) Machine-sensible records used to establish fee compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A fee payer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Fee payers are not required to construct machine-sensible records other than those created in the ordinary course of business. A fee payer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for fee purposes.

(2) Electronic Data Interchange Requirements.

(A) Where a fee payer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of fee, indication of fee status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the fee payer maintains a method which allows the board to interpret the coded information.

(B) The fee payer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a fee payer using EDI technology receives electronic invoices from its suppliers. The fee payer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the fee payer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the fee payer need not retain its EDI transaction for fee purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the board, the fee payer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the fee documents prepared by the fee payer and the measures employed to ensure the integrity of the records.

(B) The fee payer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) Machine-Sensible Records Maintenance Requirements.

(1) The fee payer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that fee payers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) Access to Machine-Sensible Records.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a fee payer's facts and circumstances through consultation with the fee payer.

(2) Such access will be provided in one or more of the following manners:

(A) The fee payer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The fee payer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The fee payer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The fee payer and the board may agree on other means of providing access to the machine-sensible records.

(f) Fee payer Responsibility and Discretionary Authority.

(1) In conjunction with meeting the requirements of subdivision (c), a fee payer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the fee payer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The fee payer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A fee payer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the fee payer of its responsibilities under this regulation.

(g) Hardcopy Records.

(1) Except as specifically provided, fee payers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the fee payer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct fee liability relating to the transaction are subsequently received and retained by the fee payer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) Alternative Storage Media.

(1) For purposes of storage and retention, fee payer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the board, a fee payer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) Record Retention - Time Period. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) Record Retention Limitation Agreements.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the fee payer to modify or waive any of the specific requirements in this regulation. A fee payer's request for an agreement must specify which records (if any) the fee payer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The fee payer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a fee payer seeks to limit its retention of machine-sensible records, the fee payer may request a record retention limitation agreement, which shall:

1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of fee payer computer resources, and

2. specifically identify which of the fee payer's records the Board determines are not necessary for retention and which the fee payer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a fee payer's request for a record retention limitation agreement and notify the fee payer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the fee payer of the responsibility to keep adequate and complete records supporting entries shown on any fee or information return.

(2) A fee payer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the fee payer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the fee payer of the results of any evaluation, including acceptance or disapproval of any proposals made by the fee payer (e.g., to discard certain records) or any changes considered necessary to bring the fee payer's practices into compliance with this regulation.

(B) Since the evaluation of a fee payer's record retention practices is not directly related to the determination of fee reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 50153.

(C) Unless otherwise specified, an agreement shall not apply to accounting and fee systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or fee system shall be retained by the fee payer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the fee payer's signing of a record retention limitation agreement, acquires or is acquired by the fee payer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The board shall notify the fee payer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) Failure to Maintain Records. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the fee and may result in penalties or other appropriate administrative action.

Authority: Revenue and Taxation Code Section 50152.

References: Revenue and Taxation Code Sections 50153.